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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1945

No. 60

JAMES E. MARKHAM, Alien Property Custodian,

Petitioner,

vs.

ALVINA ALLEN, GERTRUDE DINWIDDIE, HILDA PIGOZZI, FRED WAGNER, PAUL WAGNER, and RUDOLPH WAGNER,

Respondents.

BRIEF FOR RESPONDENTS.

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OPINIONS BELOW.

The opinion of the District Court (R. 29) is reported in 52 F. Supp. 850. The opinion of the Circuit Court of Appeals (R. 50) is reported in 147 F. (2d) 136.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered January 24, 1945. The jurisdiction of this Court is invoked by the petitioner under Section 240(a) of the *Judicial Code,* as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

The question presented is whether a federal district court can assume jurisdiction in an *in rem* proceeding to determine heirship and order distribution of the estate of a decedent where the estate is in the process of probate in a state court and where an *in rem* proceeding to determine heirship is pending in said estate in the state probate court.

STATUTES INVOLVED.

The statutes involved are Section 24 (1) of the Judicial Code as amended (28 U.S.C. 41 (1)) which provides that the District Courts have jurisdiction "of all suits of a civil nature, at common law or in equity brought by the United States or by an officer thereof * * *" and upon the Act of October 6, 1917, 40 Stat. 425, 50 U.S.C., Appendix, Section 17, which provides that the District Courts have jurisdiction to make such orders and decrees as are necessary and proper "to enforce the provisions of this Act."

STATEMENT OF THE CASE.

This is an action by the Alien Property Custodian against the executor of the will of Alvina Wagner, deceased, and against the defendants who are the American heirs at law of the decedent for adjudication of the rights and interests, if any, of the Alien Property Custodian.

The testatrix, a resident of San Francisco, California, died on June 6, 1942, leaving real and personal property in the State of California and her estate is now in the course of probate in the Superior Court of the State of California in and for the City and County of San Francisco.

Under the will of the testatrix the property was left to nationals of Germany residing in Germany on the date of her death. On December 31, 1942, the defendants filed a petition in the court in which probate proceedings were pending asking the court to determine heirship. On January 23, 1943, while this petition to determine heirship was pending in the state court, the Alien Property Cutodian by Vesting Order 762, vested in himself for the use of the United States all the title of alien legatees and devisees.

The appellants claim the estate as heirs at law of the decedent upon the ground that under California Probate Code, Sections 259, 259.1 and 259.2 (see Appendix, page i), that the legatees and devisees named in the will are ineligible to take and that the estate should pass by the California laws of intestate succession.

ARGUMENT.

I.

SECTION 17 OF THE TRADING WITH THE ENEMY ACT DOES NOT CONFER JURISDICTION ON THE FEDERAL COURTS.

In support of his contention that the federal court properly assumed jurisdiction under Section 17 of the Trading With the Enemy Act the petitioner makes much in argument of what could have been done by vesting the property itself instead of vesting merely the undetermined interest of the aliens in the property. Had such action been taken by the Alien Property Custodian there is no doubt that the resident heirs would have had to follow different procedures in protecting their rights. However, we are not concerned with what might have been done or the legal effect of actions the Custodian might have taken, we are only concerned with, and must address ourselves to, what was actually done in this case. Cases such as *Central Union Trust Co. v. Garvan,* 254 U.S. 554, *Stoehr v. Wallace,* 255 U.S. 239, and *Commercial Trust Co. v. Miller,* 262 U.S. 51, cited by petitioner (Pet. Br. pp. 10, 11, 12, 14) are obviously not in point. Thus the court in *Commercial Trust Co. v. Miller;* supra, at page 53, made the following statement concerning the Trading With the Enemy Act:

> "The act has received exposition in *Central Union Trust Co. v. Garvan,* 254 U.S. 554, and *Stoehr v. Wallace,* 255 U.S. 239, and what it authorizes, and the conditions of the exercise of its authorization determined.
>
> "Whatever problems the act presents those cases resolve. They decide that the President's

power, may, under § 5 of the act, be delegated to and be exercised by the Custodian, and that the determination of the Custodian is conclusive whether right or wrong. And it may be exercised by forcible seizure of the property or by suit, and, if by suit, the suit is purely possessory and must be yielded to; the right of any claimant being postponed to subsequent assertion. And it was decided that the Custodian acquires by suit 'nothing but the preliminary custody such as would have been gained by seizure. It attaches the property to make sure that it is forthcoming if finally condemned and does no more.' In other words, and in comprehensive description, the act may be denominated an exercise of governmental power in the emergency of war and its procedure is accommodated to and made adequate to its purpose, but securing, as well, the assertion of opposing or countervailing rights 'by a suit in equity unembarrassed by the precedent executive determination', and if the claimant 'prevails' the property 'is to be forthwith returned to him'."

When the complaint in the case now before the court (R. 2-5) is read it is clear that this is not a "purely possessory" suit in which the Custodian would acquire nothing but "preliminary custody" but instead is a suit in which the court is asked to declare that the Alien Property Custodian is the owner of the property and to determine that the resident heirs are entitled to no part of the estate; it is a proceeding to determine who are the legatees under a will, in short, it is probate.

In *Application of Miller*, 288 Fed. 760, cited by the Alien Property Custodian as a case "substantially identical with this" (Pet. Br. p. 13) the court at page 766 says:

> "The legatees in the instant case therefore, had *vested interests* in the estate of Mr. Von Post and it is these *vested interests* which the Custodian is attempting to get into his possession." (Emphasis added.)

However, in this case the principal point at issue is whether the alien enemies had *any* interest for the Alien Property Custodian to vest.

In the same case, at page 767, the court in speaking of *In re Miller*, 281 Fed. 764, cited by petitioner (Pet. Br. p. 13), says:

> "We held in that case that a demand validly made by the Custodian operated at once as a seizure of the property demanded, notwithstanding the failure of the one upon whom the demand was made to comply with its terms; and we also held in that case that the subsequent proceedings in the District Court which the Custodian is compelled to bring in cases in which a demand is not complied with is not a proceeding to make a seizure but only one to enforce a seizure which was already effected by the demand."

Thus it can be seen that the cases cited bear no relation to the instant case for here the court is not asked to "enforce a seizure" which is already effected, but instead to determine what, if anything, the Custodian can seize.

In *Central Union Trust Co. v. Garvan*, 254 U.S. 554, cited by petitioner (Pet. Br. pp. 11, 14), the demand of the Custodian was for the property itself; here only the undetermined interest of the aliens was vested, and of course a judicial determination is necessary to establish what the Custodian has vested.

In *Kahn v. Garvan*, 263 Fed. 909, cited by petitioner (Pet. Br. pp. 13, 14), at page 913 the court says:

> "In the case at bar all he (Alien Property Custodian) claimed was the *acknowledged* rights of enemies * * *". (Emphasis added.)

In the present case the rights of the aliens, if any, have never been ascertained. Whether they take as legatees or whether no legacy has validly been given to them has not yet been determined. This matter is now up for determination before the probate court as a proceeding in probate. The Alien Property Custodian in this case is asking the federal court to ascertain the interest of the aliens and to order distribution of the net estate to him. (R. 4-5.) The question in this case is whether there is any property subject to seizure by the Alien Property Custodian. In order for there to be a *res* so subject there must be property of a non-resident alien. Without such there is nothing to seize or vest, and nothing upon which to predicate the district court's jurisdiction conferred in Section 17 of the Trading With the Enemy Act.

II.

JURISDICTION IS NOT CONFERRED BY JUDICIAL CODE SECTION 24(1).

In view of the clear holdings of the California courts it is difficult to understand the petitioner's insistence that this is not a matter in probate. It has been flatly held in *Estate of O'Dea,* 15 Cal. (2d) 637, 638, 104 P. (2d) 368, that

> "A proceeding to determine heirship is a matter in probate. (*In re Blythe,* 110 Cal. 226.)"

In the case there cited it is held that such a proceeding "is embraced within the scope of 'matter in probate' as clearly as is the proceeding for the sale of real property to pay the debts of an estate." (*In re Blythe,* 110 Cal. 226, 228, 42 Pac. 641.)

The probate proceedings in California being a proceeding *in rem* and the ascertainment of the rights to inherit (here the determination that "the defendants are entitled to no part of the estate" sought by the Alien Property Custodian (R. 4, 5) in the district court and obtained therefrom (R. 41, 42)) being a part of that proceeding, how can it be said that the assumption of jurisdiction by the district court, its denial of the motion of the six defendant heirs and its decree upholding the validity of the devises and legacies and adjudging the plaintiff to be entitled to receive the entire net estate, do not constitute an exercise of jurisdiction in an *in rem* proceeding, or that the judgment rendered bore no relation to the *res?*

In *Sutton v. English,* 246 U.S. 199, cited by the petitioner (Pet. Br. p. 16), it was held that a suit to

annul a will was a probate proceeding and outside the jurisdiction of a federal court. In that case it was sought to have the district court declare the provisions of a will invalid; in the case now before the court the Alien Property Custodian sought to have the district court declare (and obtained that declaration R. 41, 42) the provisions of this will to be valid. Why the federal courts should have jurisdiction to declare a will valid when they do not have jurisdiction to declare them invalid is not explained by the petitioner. Had the district court decided that the resident heirs should prevail it would have had to hold the will invalid; something which is clearly beyond its jurisdiction.

Case of Broderick's Will, 21 Wall. 503;
Ellis v. Davis, 109 U.S. 485;
Farrell v. O'Brien, 199 U.S. 89.

In *Farrell v. O'Brien*, 199 U.S. 89, at page 110 the test of jurisdiction is clearly laid down:

> "First. That, as the authority to make wills is derived from the State and the requirement of probate is but a regulation to make a will effective, matters of pure probate, in the strict sense of the words, are not within the jurisdiction of the courts of the United States.
>
> "Second. That where a state law, statutory or customary, gives to the citizens of the State, in an action or a suit *inter partes*, the right to question at law the probate of a will or to assail probate in a suit in equity the courts of the United States in administering the rights of citizens of other States or aliens will enforce such remedies."

The court then went on to examine the state statutes involved (Washington) and held that as the proceeding could only be had in the probate court of the state it was not within the jurisdiction of the federal court.

In *Waterman v. Canal-Louisiana Bank Co.*, 215 U.S. 33, chiefly relied on by the petitioner (Pet. Br. pp. 16, 19, 20, 26), the court specifically mentioned and approved the rules laid down in *Farrell v. O'Brien*, supra, 215 U.S. 33, at page 44. Likewise *Sutton v. English*, 246 U.S. 199, referred to by the petitioner (Pet. Br. p. 16), cites *Farrell v. O'Brien*, supra, and follows the holding therein. Nor can anything be found in any of the cases referred to by the petitioner which militates against the clear holdings of cases cited by the Circuit Court in its opinion (R. 50, 51) or of such cases as *Farrell v. O'Brien*, or *Sutton v. English*.

An extensive citation of authority is not required to determine whether this suit is *in personam* or *in rem*. An examination of what was prayed for and what was granted will reveal the nature of the suit; the allegations and prayer of the complaint allege ownership and seek adjudication determining the *res* to be in the Alien Property Custodian. (R. 2-5.) The judgment (R. 40-42) grants the relief prayed for and decrees that the devises and legacies contained in the will are valid, that none of the resident heirs have any interest in the estate and that the Alien Property Custodian is entitled to the entire net estate.

A more complete usurpation of the probate jurisdiction of the state court would be difficult to imagine.

In truth and fact it becomes a mere ministerial agent to carry out the decrees of the federal courts.

Furthermore, the complaint shows that the property was in the process of administration in the probate court in California. The petition to determine heirship filed by the resident heirs was a part of the probate proceeding. No independent suit or suit *inter partes* could have been maintained in the California courts.

Estate of O'Dea, 15 Cal. (2d) 637, 104 P. (2d) 368;

Estate of Ross, 180 Cal. 643; 182 Pac. 755;

Whalen v. Smith, 163 Cal. 360, 125 Pac. 904;

Estate of Blythe, 110 Cal. 226, 42 Pac. 641.

The purpose of those proceedings is to administer the estate and distribute it according to the laws of California and to that end the proceeding is *in rem.*

Estate of Olcese, 210 Cal. 262, 291 Pac. 193;

Murray v. Superior Court, 207 Cal. 381, 278 Pac. 1033;

Smith v. Fidelity etc. Co., 130 Cal. App. 45, 19 P. (2d) 1018.

This suit cannot be maintained to deprive the state court of its previously acquired jurisdiction of the *res.*

United States v. Bank of New York & Trust Co., 296 U.S. 463.

It is to be noted that in each case where the federal court undertook the ascertainment of rights of inheritance or succession there existed a jurisdictional diversity of citizenship. In *United States v. Klein,* 303 U.S. 276, in which petitioner states "the applicable

doctrine was clearly outlined" (Pet. Br. p. 19), the Supreme Court qualified its opinion by the statement (at p. 281):

> "In this case jurisdiction was acquired by the District Court, *by reason of diversity of citizenship,* to adjudicate the rights of the parties." (Emphasis added.)

In *Waterman v. Canal-Louisiana Bank & Trust Co.,* 215 U.S. 33, which petitioner classifies as "the leading case in this field" (Pet. Br. p. 20), the suit was brought in the Circuit Court of the United States for the Eastern District of Louisiana by residents and citizens of the State of Illinois against the defendant bank, a citizen of the State of Louisiana, as executor. The Supreme Court held:

> "This court has uniformly maintained the right of Federal courts of Chancery to exercise original jurisdiction (*the proper diversity of citizenship existing*) in favor of creditors, legatees, and heirs, to establish their claims and have a proper execution of the trust as to them." (Emphasis added.)

In *Commonwealth Trust Co. v. Bradford,* 297 U.S. 613, cited by petitioner as being "of particular significance here" (Pet. Br. pp. 22, 23), no matter in probate was involved and no ascertainment of rights of inheritance was required. The federal court had the ordinary original jurisdiction of suits by receivers of national banks (Title 28, U.S.C.A., Sec. 41, (1) and (16)), and it was held that no extraordinary circumstances were disclosed by reason of which the federal

court should not retain jurisdiction and give the receiver an adjudication of his rights.

In the face of the fact that there are no decisions involving matters in probate where inheritance rights must be ascertained which recognize jurisdiction in a federal court in the absence of diversity of citizenship, petitioner cites the two following cases in support of his assertion that the fact that an officer of the United States brought the suit suffices:

Pufahl v. Estate of Parks, 299 U.S. 217;
United States v. Peoples Trust and Savings Co., 97 Fed. (2d) 771 (C.C.A. 7).

Each of these cases, however, involves the adjudicating of claims against the administrator of an estate; in neither is the determination of heirship or the ordering of distribution of the estate present. In the *Pufahl* case the executor had refused to honor the demand for payment of an assessment made by the receiver appointed by the Comptroller of the Currency, and the action was brought to establish this claim. In the *Peoples Trust and Savings Co.* case the action was brought by the United States against the executor of an estate to recover a judgment for income taxes. In neither case was the question of heirship involved,—something essentially a matter in probate. In neither case did the plaintiff seek relief such as that sought in the instant case, viz., judgment determining the resident heirs at law to be entitled to no part of the estate, determining plaintiff to be the owner of specifically described real property, and ordering the defend-

ant executor to pay the entire net estate to plaintiff. (R. 4, 5.) We submit that neither case cited is authority for petitioner's contention.

III.

THIS IS PURELY THE MATTER OF PROBATE OF A WILL.

It is the general rule that the laws in force in the place of the domicile of the testator are a part of his will.

Estate of Barnett, 97 Cal. App. 138, 275 Pac. 453;

Estate of Barton, 196 Cal. 508, 238 Pac. 681;

In re Bergdorf's Will, 206 N.Y. 309, 99 N.E. 714.

As stated by the court in *Estate of Barnett*, supra:

> "Thus, when the legislature has prescribed the rules and conditions under which the disposition and administration of estates may be had, the testator is deemed to intend the result which such rules produce and 'they affect the testamentary dispositions and provisions as though embodied in the will.'"

Here the decedent made her will December 23, 1941. California Probate Code Sections 259, 259.1 and 259.2 had become effective on July 1, 1941. Under the law these sections were a part of her will. The decedent died June 6, 1942. It is fair to presume that during this period she had become aware of the Probate Code sections involved, in other words, she had become

aware of the fact that the law of the state nullified her gift to the alien enemies. Yet she did not change her will but was satisfied to let the probate section control it. Therefore, at the date of her death, when the will first spoke,—being an ambulatory instrument,—she knew she had disposed of property as the law had directed its disposition. It was as if on June 5, 1942, she had added a codicil to her will stating that because she was unable to make a gift to aliens residing in Germany, she therefore revoked that provision in her will which purported to make such a gift, and in lieu thereof made a gift to her resident heirs. Had she done so, would there have been any question of the validity of such disposition? Where would there have been any federal question? Would the Alien Property Custodian then have contested for a vesting of rights under the prior will? A construction of the words of the will, and of the local law applicable thereto, vests the gift in the local heirs *by the act* of the testatrix. The determination of this question is a matter of probate administration.

The decision of the California court holding that Sections 259, 259.1 and 259.2 of the California Probate Code are constitutional fully support the views which we have expressed in this brief. We refer, of course, to *Estate of Bevilacqua* (August 21, 1945), 70 Advance California Appellate Reports, page 681, 161 P. (2d) 589, and *Estate of Knutzen,* 161 P. (2d) 593. The court again expresses the well established law that the state which confers a right of inheritance or the right to leave property by will may abolish it at any time or

impose conditions on its existence. As stated above, because of the death of the decedent after the effective date of the above probate sections it must be assumed that she, prior to her death, had become aware of the probate code sections involved, and it is therefore as if she in express words desired the law to become a part of her will. That law entering into and becoming a part of her will gave her property to the California heirs and not to the aliens. Again a pure question of probate is involved, and the question is not what interest did the alien take under her will, but rather who was a legatee under her will. A pure question of probate administration in which no federal question is involved.

CONCLUSION.

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be sustained.

Dated, Richmond, California,
November 2, 1945.

JOSEPH WAHRHAFTIG,
Attorney for Respondents.

S. C. MASTERSON,
MATT WAHRHAFTIG,
Of Counsel.

(Appendix Follows.)

California Probate Code, Sections 259, 259.1, 259.2.

259. *Right of aliens to inherit: (Dependence on reciprocal rights).* The rights of aliens not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are inhabitants and citizens and upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign countries.

259.1. *Burden of proof (as to reciprocal rights).* The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal rights set forth in Section 259.

259.2. *When property escheats.* If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property.

SUPREME COURT OF THE UNITED STATES.

No. 60.—October Term, 1945.

James E. Markham, Alien Property Custodian, Petitioner, *vs.* Alvina Allen, Gertrude Dinwiddie, Hilda Pigozzi, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 7, 1946.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The question is whether a district court of the United States has jurisdiction of a suit brought by the Alien Property Custodian against an executor and resident heirs to determine the Custodian's asserted right to share in decedent's estate which is in course of probate administration in a state court.

On January 23, 1943, petitioner, the Alien Property Custodian, acting under § 5(b)(1)(B) of the Trading with the Enemy Act, 55 Stat. 839, 50 U. S. C. App., Supp. IV, § 616, and Executive Order No. 9095, as amended by Executive Order 9193, 3 Code Fed. Reg. (Cum. Supp.) 1121, issued vesting order No. 762, by which he purported to vest in himself as Custodian all right, title and interest of German legatees in the estate of Alvina Wagner, who died testate, a resident of California, whose will was admitted to probate and whose estate is being administered in the Superior Court of California. Previously, on December 30, 1942, six of the other heirs-at-law of decedent, residing in the United States, filed a petition in the Superior Court of California for determination of heirship, asserting that under the provisions of California Statutes, 1941, chap. 895, § 1,* the German legatees were ineligible as beneficiaries, and that the American heirs were therefore entitled to inherit decedent's estate. This proceeding is still pending.

On April 6, 1943, the Custodian brought the present suit in the district court for the northern district of California against the executor and the six California claimants, seeking a judgment determining that the resident claimants have no interest in the

* This statute purports to limit inheritance by non-resident aliens to nationals of countries which grant reciprocal rights of inheritance to American citizens.

estate, and that the Custodian, by virtue of his vesting order, is entitled to the entire net estate of the decedent after payment of expenses of administration, debts, and taxes, and is the owner of specified real estate of decedent passing under the will. The complaint prayed that the executor be ordered to pay the entire net estate to the Custodian upon the allowance by the state court of the executor's final account. On motion of respondents to strike the complaint, and on petitioner's motion for judgment on the pleadings, the district court gave judgment for petitioner, 52 F. Supp. 850. The court held that it had jurisdiction to enforce the vesting order of petitioner; that its jurisdiction is derived from the Constitution and laws of the United States and is not subject to restriction or ouster by state legislation; and that California Statutes, 1941, chap. 895, § 1, is invalid. The judgment declared that petitioner had acquired the interests of the German nationals in the estate of decedent; that none of respondents have any right, title or interest in the estate; and that petitioner is entitled to receive the net estate in distribution after payment of expenses of administration, debts and taxes.

Without passing upon the merits, the Court of Appeals for the Ninth Circuit reversed and ordered the cause dismissed, upon the ground that the district court was without jurisdiction of the subject matter of the action. 147 F. 2d 136. The court thought that since "the matter is within probate jurisdiction and that court is in possession of the property, its right to proceed to determine heirship cannot be interfered with by the federal court."

It is not denied that the present suit is a suit "of a civil nature . . . in equity," brought by an officer of the United States, authorized to sue, of which district courts are given jurisdiction by §24(1), 28 U. S. C. § 41(1), of the Judicial Code. But respondents argue, as the Circuit Court of Appeals held, that as the district courts of the United States are without jurisdiction over probate matters, see *Broderick's Will*, 21 Wall. 503, 517; *Byers* v. *McAuley*, 149 U. S. 608, 615, which the court of appeals thought are not "cases or controversies within the meaning of Article III of the Constitution," and since the present suit to determine heirship of property being administered in a state probate court is an exercise of probate jurisdiction, the district court is without jurisdiction.

It is true that a federal court has no jurisdiction to probate a will or administer an estate, the reason being that the equity juris-

diction conferred by the Judiciary Act of 1789 and § 24(1) of the Judicial Code, which is that of the English Court of Chancery in 1789, did not extend to probate matters. *Kerrich* v. *Bransby*, 7 Brown P. C. 437; *Barnesley* v. *Powel*, 1 Vest. Sen. 284; *Allen* v. *Macpherson*, 1 Phillips, 133; 1 House of Lords Cases, 191; *Broderick's Will*, *supra*; *Farrell* v. *O'Brien*, 199 U. S. 89; *Sutton* v. *English*, 246 U. S. 199, 205. But it has been established by a long series of decisions of this Court that federal courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees and heirs" and other claimants against a decedent's estate "to establish their claims" so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court. *Waterman* v. *Canal-Louisiana Bank & Trust Co.*, 215 U. S. 33, 43, and cases cited. See *Sutton* v. *English*, *supra*, 205; *United States* v. *Bank of New York Co.*, 296 U. S. 463, 477; *Commonwealth Trust Co.* v. *Bradford*, 297 U. S. 613, 619; *United States* v. *Klein*, 303 U. S. 276; *Princess Lida* v. *Thompson*, 305 U. S. 456, 466.

Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, *Penn Co.* v. *Pennsylvania*, 294 U. S. 189, 195-196 and cases cited; *United States* v. *Bank of New York Co.*, *supra*, 477-478 and cases cited, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court. *Commonwealth Trust Co.* v. *Bradford*, *supra*, 619; *United States* v. *Klein*, *supra*, 281 and cases cited.

Although in this case petitioner sought a judgment in the district court ordering defendant executor to pay over the entire net estate to the petitioner upon an allowance of the executor's final account, the judgment declared only that petitioner "is entitled to receive the net estate of the late Alvina Wagner in distribution, after the payment of expenses of administration, debts, and taxes." The effect of the judgment was to leave undisturbed the orderly administration of decedent's estate in the state probate court and to decree petitioner's right in the property to be distributed after its administration. This, as our authorities demonstrate, is not

an exercise of probate jurisdiction or an interference with property in the possession or custody of a state court.

There remains the question whether the district court, having jurisdiction should, in the exercise of its discretion, have declined to entertain the suit which involves issues of state law and have remitted the petitioner to his remedy in the state probate proceeding. See *Thompson* v. *Magnolia Co.*, 309 U. S. 478, 483; *Railroad Commission* v. *Pullman Co.*, 312 U. S. 496; *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168; compare *Pennsylvania* v. *Williams*, 294 U. S. 176, 182-186; *Gordon* v. *Ominsky*, 294 U. S. 186; *Gordon* v. *Washington*, 295 U. S. 30, 39; *United States* v. *Bank of New York Co.*, *supra*, 480. The mere fact that the district court, in the exercise of the jurisdiction which Congress has conferred upon it, is required to interpret state law is not in itself a sufficient reason for withholding relief to petitioner. *Meredith* v. *Winter Haven*, 320 U. S. 228. This is the more so in this case because § 17 of the Trading with the Enemy Act, 50 U. S. C. App. § 17, specially confers on the district court, independently of the statutes governing generally jurisdiction of federal courts, jurisdiction to enter "all such orders and decrees . . . as may be necessary and proper in the premises to enforce the provisions" of the Act. Although the district court has jurisdiction of the present case under § 24(1) of the Judicial Code, irrespective of § 17, the latter section plainly indicates that Congress has adopted the policy of permitting the custodian to proceed in the district courts to enforce his rights under the Act, whether they depend on state or federal law. The cause was therefore within the jurisdiction of the district court, which could appropriately proceed with the case, and the Court of Appeals erroneously ordered its dismissal.

The judgment is reversed and the cause remanded to the Circuit Court of Appeals for further proceedings in conformity to this opinion.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice RUTLEDGE is of the opinion that the cause should be remanded to the district court and jurisdiction should be retained by it pending the state court's decision as to the persons entitled to receive the net estate.